International Union of Operating Engineers, Local 542C (Ransome Lift) *and* John Lavelle. Case 4–CB–6009

July 31, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND OVIATT

On April 15, 1991, Administrative Law Judge Joel A. Harmatz issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in response, a cross-exception,[1] and a brief in support of his cross-exception.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions,[3] and to adopt the recommended Order as modified and set forth in full below.[4]

ORDER

The National Labor Relations Board orders that the Respondent, International Union of Operating Engineers, Local 542C, Norristown, Pennsylvania, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Causing or attempting to cause Ransome Lift to discharge or otherwise discriminate against John Lavelle, or any other employee, for failure to tender to the Respondent periodic dues without adequately advising him of his obligations, in violation of Section 8(a)(3) of the Act.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act, except to the extent that those rights may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make John Lavelle whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, with interest as set forth in the remedy section of the judge's decision.

(b) Remove from its files, and ask the Employer to remove from the Employer's files, any reference to John Lavelle's unlawful discharge request and notify him in writing that it has been done and that evidence of this unlawful action shall not be used as a basis for future action against him.

(c) Post at its business office copies of the attached notice marked ''Appendix.''[5] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Forward a sufficient number of signed copies of the notice to the Regional Director for Region 4 for posting by Ransome Lift at its place of business in Bensalem, Pennsylvania, in places where notices to employees are customarily posted, if the Employer is willing to do so.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time-

[1] The General Counsel filed a cross-exception to the judge's ''apparent finding'' that the only reason that the Respondent's notice to Lavelle of his delinquent dues payments was deficient was because it contained an overcharge. The judge found, and we agree, that the Respondent's notice to Lavelle was also deficient because of the Respondent's failure to give Lavelle a reasonable opportunity to meet his dues obligation before initiating any adverse action against him. *R. H. Macy & Co.*, 266 NLRB 858, 860 (1983); *Teamsters Local 572 (Ralphs Grocery)*, 247 NLRB 934, 935 (1980); *Boilermakers Local 732 (Triple A South)*, 239 NLRB 504 (1978). We further find that the notice was deficient because it did not adequately inform Lavelle of the method used to compute the amount owed. *Teamsters Local 122 (August A. Busch & Co.)*, 203 NLRB 1041, 1042 (1973), enfd. mem. 509 F.2d 1160 (1st Cir. 1974).

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] In his posthearing brief to the judge, counsel for the Respondent asserted that Lavelle ''told one co-worker that he was not going to pay the Union.'' The judge, at fn. 10 of his decision, stated that the ''record unmistakably demonstrates that this is in error.'' Contrary to the judge's finding, the record supports the Respondent's assertion. However, the alleged statement was made in January 1988, prior to Lavelle's joining the Union in March 1988, paying the initiation fee and a 3-month advance on his monthly dues, and signing a checkoff authorization card allowing the Employer to withhold and remit to the Union 1 percent of his weekly wages. Under these circumstances, we find that while Lavelle may have been negligent in not paying his $8 monthly dues in a timely manner, there is no evidence to indicate that he ''willfully and deliberately sought to evade his union-security obligations.'' *Teamsters Local 630 (Ralph's Grocery)*, 209 NLRB 117, 125 (1974).

Chairman Stephens deems this case distinguishable from *I.B.I. Security*, 292 NLRB 648 (1989), in which the Board (Member Cracraft dissenting) found that the union did not breach its fiduciary obligation when it informed a delinquent employee of the need to pay an initiation fee, the amount of the fee, the possibility of discharge for failure to pay, and gave the employee ample time to tender payment. In that case, the Board found that even if the union had not fully complied with the notice requirements, it would not have found a violation because the employee willfully evaded his union responsibilities. Here, we find that Lavelle did not willfully seek to evade his dues obligation. Thus, by failing to comply with the notice requirements, the Respondent has violated Sec. 8(b)(1)(A) and (2) of the Act.

Member Cracraft notes that in *I.B.I. Security* she would have found that the union violated Sec. 8(b)(1)(A) and (2), and therefore finds it unnecessary to distinguish that case.

[4] In his recommended Order the judge failed to include an expunction remedy. In *R. H. Macy*, 266 NLRB at 861 fn. 19, the Board found that such a remedy is necessary and appropriate in all cases in which a union causes an employee to be unlawfully discharged, laid off, or otherwise discriminated against. We shall modify the judge's recommended Order accordingly.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

cards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT cause or attempt to cause Ransome Lift to discharge or otherwise discriminate against John Lavelle, or any other employee, for failure to tender periodic dues without adequately advising him of his obligations, in violation of Section 8(a)(3) of the Act.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act, except to the extent that those rights may be affected by an agreement requiring membership in a labor organization as a condition of employment.

WE WILL make John Lavelle whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, with interest.

WE WILL remove from our files and ask the Employer to remove from the Employer's files any reference to John Lavelle's discharge request and notify him in writing that it has been done and that evidence of this unlawful action will not be used as a basis for future action against him.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 542C

Donna Nutini, Esq., for the General Counsel.
Jonathan Walters and *Charles T. Joyce, Esqs. (Walters, Willig, Williams and Davidson)*, of Philadelphia, Pennsylvania, for the Respondent.

DECISION

STATEMENT OF THE CASE

JOEL A. HARMATZ, Administrative Law Judge. This case was tried in Philadelphia, Pennsylvania, on January 29, 1991, on an unfair labor practice charge filed on January 25, 1990, and a complaint issued on May 25, 1990, alleging that the Respondent[1] violated Section 8(b)(1)(A) and (2) of the Act by attempting to cause, and causing the Employer, Ransome Lift, to terminate John Lavelle on grounds proscribed by the Act. In its duly filed answer, the Respondent denied that any unfair labor practices were committed. Following close of the hearing, briefs were filed by the General Counsel and the Respondent.

On the entire record,[2] including my opportunity directly to observe the witnesses while testifying and their demeanor, and after considering the posthearing briefs, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Employer is a Pennsylvania corporation, engaged in the sale and service of heavy equipment from its facility located in Bensalem, Pennsylvania. In the course thereof, the Employer, during the calendar year preceding issuance of the complaint, sold and shipped products valued in excess of $50,000 directly to points outside the Commonwealth of Pennsylvania. The complaint alleges, the answer admits, and I find that the Employer is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, the answer admits, and I find that the Respondent, International Union of Operating Engineers, Local 542C (the Union), is a labor organization within the meaning of Section 2(5) of the Act.

III. ALLEGED UNFAIR LABOR PRACTICES

A. *Issues and Position of the Parties*

This case stems from the Employer's adherence to the Union's request that employee John Lavelle be removed from payroll because of a delinquency in his membership dues. The complaint, as amended, avers that the Union intervened in this respect without first affording adequate guidance to Lavelle concerning his obligations under the union-security clause.

The Respondent defends on grounds that Lavelle was opposed to the Union, as well as his obligation to pay union dues, and that, ultimately, the Union caused his separation only after Lavelle adamantly refused to pay after he was apprised of his precise arrearages in itemized form.

B. *Background*

The Employer is engaged in the service and repair of heavy construction equipment. These operations, often, are performed offsite, in the Employer's shop. At this location,

[1] The name of the Employer appears as amended at the hearing.

[2] The General Counsel's motion to correct inadvertent errors in the official transcript is noted and granted.

the Employer utilizes a fixed, stationary work force, distinct from transitory employees customarily represented by the Operating Engineers on construction jobs.[3]

Lavelle was hired on August 31, 1987. He completed his probationary period on November 30, 1987. At that time, by virtue of article 1, section 4, of the governing collective-bargaining agreement, he was obligated to pay union dues and initiation fees as a condition of continued employment. (Jt. Exh. 2.) He did not, however, join the Union at that time, explaining that he lacked the $68 necessary to meet initial membership obligations. Several months later, but prior to March 1988, Lavelle, having borrowed that sum from his mother, signed a membership application, and other documents requisite to entry. (R. Exh. l(b).)

From the outset, Lavelle was aware that the Respondent maintained a two-tiered dues structure. Thus, as described in a letter forwarded to him by the Union in March 1988, the financial obligations were to be met through two payments: (i) monthly dues of $8, plus (ii) weekly dues measured by 1 percent of his gross weekly earnings. (R. Exh. 4.) On joining, Lavelle executed a checkoff authorization covering his weekly dues. However, at the time, payroll deduction was not an available medium for remittance of monthly dues. Until his termination, Lavelle, through checkoff authorization, met in full the much larger, percentage of earnings obligation. (G.C. Exh. 4.)

As might he expected, the fixed monthly charge was the root of Lavelle's problem. Thus, his initiation fee of $68, included a 3-month advance, satisfying his monthly dues through May 1988. Thereafter, until his termination on January 16, 1990, he did not make a single $8 payment.

In the interim, on August 17, 1988, the Union attempted to advise Lavelle by certified letter that his monthly dues were 3 months in arrears, that he would be suspended unless payment in full were forwarded by August 31, 1988, and expelled if not paid within 6 months. (R. Exh. 6.)

In September 1988, pursuant to renewal negotiations, the collective-bargaining agreement was revised, for the first time allowing employees to authorize check off of their monthly dues. Lavelle avers that he was under the impression that he availed himself of this opportunity by execution of the appropriate checkoff authorization. Neither the Respondent nor the Company had evidence that he did so. Monthly dues were never deducted from his wages.

As the August 17, 1988 letter warned, Lavelle pursuant to internal union rules was suspended for nonpayment of *monthly* dues in August 1988, and expelled in December 1988 for that same reason. On expulsion, the Union continued to collect his weekly dues,[4] but did not specifically inform him that he had lost all vestige of union membership. It was not until January 16, 1990, 15 months after it allegedly sent the August 1988 warning letter, that the Union informed Lavelle of his ongoing indebtedness for nonpayment of monthly dues, and the 1988 internal penalties imposed for that reason.[5]

The delay was understandable. Local union officials did not monitor dues payments and were unaware of any deficiency until Lavelle himself inquired if he were paid up. Thus, in January 1990, the Union effected an increase in the monthly dues from $8 to $12 per month. Membership approval was sought, and in the process, a shop steward learned that Lavelle's name was omitted from a computer printout of those that had authorized checkoff of monthly dues. When the issue was broached to Lavelle, he expressed belief that he had signed a ''card'' and should have been on the checkoff list. The steward verified with the Company's personnel department that this was not the case, and then advised Lavelle to clarify his dues status with the Union.

Lavelle called Business Agent Guy Serota, who was unaware of Lavelle's situation and indicated that he would investigate.[6] In doing so, Serota learned for the first time that Lavelle had been suspended in August 1988, and actually expelled in December 1988 for failure to pay monthly dues.

Against this background, and solely because of his financial problems with the Respondent, Lavelle was removed from the Company's payroll on January 16.[7]

C. *Analysis*

A labor organization's use of a union-security clause to enforce financial membership obligations is subject to preconditions; one, expressly stated in the Act, a second, imposed by interpretation. The first proviso to Section 8(a)(3), in terms, denies use of union-security agreements to enforce membership obligations ''other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.'' Any other pecuniary charge, even if levied legitimately, must be collected without impact on employment rights or tenure. *Associated Fur Mfrs.*, 280 NLRB 922 (1986).

Additionally, it is well settled that even where the underlying debt is limited to privileged dues and/or fees, a union's demand for termination might still run afoul of the Act. Thus, a labor organization is charged with a fiduciary duty to deal fairly with represented employees, an obligation defined by the Board in *Helmsley-Spear, Inc*., 275 NLRB 262 (1985), as follows:

> We have consistently held that labor organizations seeking to enforce valid union security provisions have a strict fiduciary duty to advise employees of their contractual obligations to maintain membership in good standing before initiating any adverse action against them. . . . Among other things, this duty includes the obligations to apprise a dues-delinquent employee of

[3] The Respondent unlike constituent building trade locals of the International is organized on an industrial basis, representing shops essentially engaged in offsite work in a factory setting.

[4] Documentary evidence shows that International Union of Operating Engineers of Eastern Pennsylvania and Delaware, pension and welfare funds, which is not a party to this proceeding, but which serves as a collection agent on behalf of the Respondent and its sister locals, acknowledged continued receipt of dues checked off on behalf of Lavelle during the entire period between his expulsion and the January termination. G.C. Exhs. 4 and 5.

[5] Lavelle testified that at no time between June 1988 and January 16, 1990, did any union representative discuss his dues obligation with him. However, he testified that in June 1988, after the new contract had been negotiated, Matt Smith gave him a checkoff authorization, which he signed and later returned. He claims that he did not pay his monthly dues because he assumed it had been deducted from his pay and remitted to the Union.

[6] Serota testified that this was his first involvement in the events leading to the January termination. He avers that in this phone conversation, Lavelle stated that he believed he had ''screwed up'' as he thought he was behind in his dues.

[7] Lavelle was rehired in May 1990.

the amount of dues arrearage, the time period in question, and the precise amount of any reinstatement fee that may be required.

The complaint, as amended, challenges the Union's interference with Lavelle's employment on a single ground. Thus, it describes the Union's action as ''based on the claim that John Lavelle was in arrears in paying dues to the Respondent, notwithstanding Respondent's failure to adequately advise Lavelle of his obligations.''

Before considering the General Counsel's position in this regard, I reject the Union's contention that Lavelle ''knowingly and will fully evaded his his dues obligation, '' hence was a ''free rider,'' who failed to qualify for statutory protection. See, e.g., *Teamsters Local 630 (Ralph's Grocery)*, 209 NLRB 117, 124 (1974). The obligation to members under that policy will be relaxed only in extreme circumstances. The evidence must disclose a conscious determination by the employee to frustrate payment. ''Negligence and inattention to union concerns are not the equivalent of the willful attempt to evade lawful financial obligations at which the 'free rider' exception is aimed.'' *Helmsley-Spear, Inc*., 275 NLRB 262, 263 (1985).

This is not a case were an employee has frustrated persistent efforts by a union to square accounts. Though Lavelle, personally, never remitted his monthly dues, the Respondent's officials prior to January 16 were unaware that this was the case. In fact, they routinely were unaware of the status of membership accounts, and apparently maintained no records of those on the Respondent's rolls who had or had not authorized monthly dues checkoff.

Thus, the fault lies with the Union, not Lavelle. Uncontested evidence refutes any notion that he labored under any preconceived design to defeat any aspect of his dues obligation. From the inception of his membership, Lavelle stood in full compliance with the far more costly impost of weekly dues. See *Kaiser Foundation Hospitals*, 258 NLRB 29, 31 fn. 4 (1981). The Union retained these payments throughout the period of delinquency, although neither billing Lavelle nor initiating efforts to collect monthly dues any time after the 1988 expulsion. Only once, from the date Lavelle joined the Union until January 16, was there a formal attempt to communicate delinquency. This was by letter dated August 17, 1988, which was mailed to an erroneous address, without the Union having secured evidence of delivery.[8] Under the precedent, it was incumbent on the Union to ''take the necessary steps to make certain that a reasonable employee will not fail to meet his obligation through ignorance or inadvertence, but will do so only as a matter of conscious choice.'' *Valley Cabinet & Mfg*., 253 NLRB 98, 108 (1980).

That Lavelle had not selected such a course is evident from the compelling, again incontestable fact, that it was Lavelle, himself, who awakened the Union. Thus, his January 1990 inquiry was an unpressured step which led the Respondent's officials to discover the suspension, expulsion, and debt. Indeed, far from repudiating any obligation, according to Serota, Lavelle opened this conversation, stating that he thought he had ''screwed up'' as he thought he had fallen behind in his dues. This is hardly the course of action that would have been selected by one seeking to evade his dues obligation. In the total circumstances, I am convinced that Lavelle would have complied with the monthly requirement just as he had in the case of weekly dues, and, thus, short-circuited this entire controversy, had the Respondent demonstrated ordinary diligence in monitoring arrearages.[9] See, e.g., *Kaiser Foundation Hospitals*, 258 NLRB 29 (1981); *Electrical Workers IBEW Local 3 (General Electric)*, 299 NLRB 995 (1990). Accordingly, as in *R. H. Macy Co*., 266 NLRB 858, 860 (1983), it is concluded that Lavelle's ''failure to keep up with his payments resulted more from inattention and neglect, induced in large part by the Union's own inattention to such matters, rather than any deliberate or conscious effort on his part to avoid paying dues.'' 266 NLRB at 860.

In the above connection, I have considered and rejected the Respondent's contention that Lavelle's 1987–1988 delay in joining the Union, or his joining coworkers in expressing exasperation with the value of dues, reflected a propensity on his part to evade his responsibilities toward the Union. Considered in conjunction with the above factors, these vagaries do not suggest that Lavelle held a resistive attitude toward the payment of dues,[10] that he was disposed to give the Union the ''runaround,'' or that he was of a mind to challenge the Union's power to collect sums rightfully due and owing. Cf. *Big Rivers Electric Corp*., 260 NLRB 329 (1982).

Beyond that, the General Counsel insists that the Union failed to comply with preconditions for terminating a member because of dues arrearages. Union security is merely authorized as a collection medium, and not a vehicle for punishing delinquent employees with job loss. Therefore, the Union before requesting termination ''at a minimum must in-

[8] The parties stipulated that the return receipt that accompanied the letter was never received by the Respondent, and the letter was not returned as undelivered. Lavelle denies ever having seen it. At the time the address used by the Union in communicating by mail with Lavelle was ''25 Pinewood Drive, Levittown, PA,'' when his actual address was ''251 Pinewood Drive, Levittown, PA.'' The General Counsel concedes that mail addressed to Lavelle at the former location would automatically be forwarded by the postal service to his correct address. Lavelle testified that although this was his legal address he did not believe that he physically resided there at the time. He had received other union mailings at this location. Even if controlled by *Fansteel, Inc*., 236 NLRB 1365, 1366 (1978), and Lavelle were deemed to have received this letter, this communication forwarded 15 months earlier would in no fashion satisfy fiduciary duties that did not mature until the Respondent sought to interfere with his employment. ''[T]he Union must bear the responsibility for . . . ambiguity. . . . in its effort to substantiate compliance with fiduciary duties.'' *H. C. Macauley Foundry Co. v. NLRB*, 533 F.2d 1198, 1201 (9th Cir. 1977).

[9] In so concluding, I have not overlooked the fact that Lavelle had reasonable grounds for suspecting that he had not paid his monthly dues. Thus, after checkoff was extended to monthly dues, payroll stubs included separate itemization for monthly dues and the weekly percentage of earnings deductions. Lavelle avers, somewhat incredulously, that he did not ''usually'' look at his pay stub. Even were that the case, anyone who had executed a checkoff card would be reminded of his having done so by the one check per month which would net less than the others. This would be particularly so in the case of Lavelle because he basically worked straight time with earnings therefore demonstrating consistency as to amount. In any even, the fact that an employee knowingly waits to be alerted to delinquency is not indicative of a conscious choice not to pay. The Union cites *Teamsters Local 630 (Ralph's Grocery)*, 209 NLRB 117, 124 (1974), for the proposition that ''a recalcitrant employee [is not permitted] to profit from his own dereliction.'' On the facts of this case, the question is whether Lavelle should be penalized with employment loss because of the Union's dereliction.

[10] In his posthearing brief, counsel for the Respondent asserts that Lavelle ''told one co-worker that he was not going to pay the Union.'' The record unmistakably demonstrates that this is in error. Miscite of the record on a matter which goes to the heart of a contention is difficult to dismiss as inadvertent.

form the employee of his obligations in order that the employee may take whatever action is necessary to protect his job tenure.'' *H. C. Macauley Foundry Co. v. NLRB*, 533 F.2d 1198, 1201 (9th Cir. 1977). Obviously, the duty to inform includes a concomitant obligation to provide the employee ''an opportunity to make payment.'' *R. H. Macy Co.*, supra, 266 NLRB at 859 fn. 10 (1983).

The Respondent, in effect, argues that the opportunity to comply was preempted by Lavelle, who, when the terms of his obligation were communicated, resisted payment. On the other hand, the General Counsel disputes that this was the case, pointing to testimony that the Union would not accept payment as an alternative to termination.

Thus, Serota answers the assertion that Lavelle was not given the opportunity to pay, by testimony that, in their second conversation on January 16, Lavelle adamantly declared that he simply would not pay the itemized sum of $418 at that time or thereafter. More specifically, Serota testified that, in this conversation, after advising Lavelle of his monthly dues deficiency, Lavelle reacted by stating that he thought the monthly dues were coming out of his check. Serota disagreed, pointing out that had this been the case, Lavelle would have noted the $8 shortage in one check per month. Serota insists that he advised Lavelle that he owed the Union $418, and would have to pay that amount in order to have his membership reinstated, adding that when Lavelle questioned why the amount was so ''high,'' he itemized the components as:

Back dues:	[11]$248
Reinstatement Fee:	[12]150
Re-Enter Death Benefit Fund:	[13]20
	$418

To this, according to Serota, Lavelle was ''quite adamant'' and reacted by stating that ''he didn't owe it, and he wasn't going to pay it.'' Serota allegedly reasoned: ''If you are an expelled member and you are not going to pay any back dues or reinstatement, you can't work here.'' Serota concedes, however, that he indicated that he would set up an examining board meeting so that if Lavelle did get the money, he could be reinstated. He admits that this seemed a futile step inasmuch as ''[Lavelle] . . . felt he was right, I was wrong, and he wasn't going to pay his back dues.''

According to Serota this was reenforced by Lavelle the next day, when Lavelle called him insisting that Serota was wrong, that the money should have been coming out of his check and that he wouldn't pay any money.[14] Critical elements of Serota's account were uncorroborated, yet sharply contradicted.[15]

First, Lavelle testified that after reporting his problem initially to Serota, the latter, on January 16, 1990,[16] telephoned him at work, reporting that he had learned that Lavelle had been expelled since 1988, and that he should finish out the day, but after that there was no way he could avoid termination, that is, until a special union board was convened, and his reinstatement approved, a process that could take several months. According to Lavelle, Serota did not advise him as to the amount owed the Union, but did refer to the aforementioned letter send in August 1988 threatening him with suspension. Lavelle denied having received that letter.

Shop Steward Smith basically confirms that Serota had adopted a stance against Lavelle's continued employment irrespective of full reimbursement. Thus, Smith relates that on January 16, after Lavelle informed him of the expulsion, he sought out Serota. After both expressed surprise at the fact that, because initiation, Lavelle had never made a monthly dues payment, Smith claims that Serota asked if Lavelle was going to pay. After Smith indicated that he did not know, Serota replied:

> [W]ell . . . he just can't work until he's reinstated . . . . you are going to have to let them know . . . that he can't work until he is reinstated.

Following this conversation, Smith returned to the shop, where he talked with Robert Senski, the Employer's branch manager, Steve Bussa, Lavelle's foreman, and Lavelle, himself. He describes the position he expressed at that session as follows:

> I made . . . clear . . . that he couldn't work until he was reinstated.

[11] An overcharge was involved here which betrays lawful invocation of a union-security clause. ''[T]he only obligation an employee has under the compulsion of the proviso to Section 8(a)(3) . . . is to pay dues for the period of employment with the employer who is party to the contract. . . . *Montgomery Ward & Co.*, 121 NLRB 1552, 1558 (1958). *Shippers Imperial*, 281 NLRB 255, 259 (1986), enfd. 838 F.2d 1217 (9th Cir. 1988). The assigned total for back dues encompassed delinquencies, when computed at $8 per month, which accounted for a debt spanning at least 31 months. Lavelle had been hired on August 31, 1987. Prior to January 16, his entire work history consisted of only 28 months, including 3 months for which his monthly dues had been paid, as well as a 3-month probation, neither of which could support an enforceable claim of dues liability. *Del E. Webb New Jersey*, 278 NLRB 169, 171 (1986); *Tallman Constructors*, 238 NLRB 159, 160 (1978); *Plain Dealer Publishing Co.*, 225 NLRB 1281, 1284 (1976).

[12] Question exists as to whether, in the circumstances, a reinitiation fee was properly enforceable under the union-security clause. Though generally allowed where the employee had previously resigned, only one case permits such a levy where membership was lost involuntarily due to internal union discipline. *Ramey Super Markets*, 226 NLRB 80, 91 (1976). It is problematical whether that result would follow where, as here, the Union, following expulsion, continued to collect weekly dues, and now insists on payment of monthly dues that accrued since the refusal of membership rights. See, e.g., *Communications Workers Local 1104 v. NLRB*, 520 F.2d 411, 419 (2d Cir. 1975).

[13] One might also question whether the death benefit charge may be classified as legitimately collectible, or a nonchargeable assessment for purposes of union security. *RCA Service*, 167 NLRB 1042, 1045 (1967); *Food & Commercial Workers Local 534 (Shop 'N Save)*, 294 NLRB 169 (1989). In addition, the collectability of this charge turns on whether its nature was fully explained to the employee, an unproven matter which might well fall within the Respondent's burden of proof. *Electrical Workers IBEW Local 3 (General Electric)*, supra, 299 NLRB 995. These issues will not affect the result and need not be reached in this proceeding.

[14] The account of this conversation in Serota's sworn prehearing affidavit does not impute any remark to Lavelle of such tenor. Indeed, adamant resistance to payment seems out of kilter with Serota's suggestion in that conversation that Lavelle withdraw his unfair labor practices charges in order first to obtain satisfaction through internal union processes.

[15] At least one aspect of Serota's testimony is difficult to reconcile with his assertion that Lavelle adamantly refused to pay. Thus, not only did Serota set up the examining board meeting, but he did so on an ''accelerated'' basis. This raises the question of whether such a step would have been taken on behalf of a member who, with defiance, had renounced obligation. At the same time, Serota's conduct with respect to the examining board is totally consistent with the mutually corroborative testimony of Lavelle, Shop Steward Matt Smith, and Employer Representatives Robert Senski and Robert Bowling that Serota's stated position was that Lavelle under no conditions could work until reinstated by that body.

[16] All dates refer to 1990 unless otherwise indicated.

Smith states that Lavelle seemed saddened by his situation, making no comment about his obligation. Lavelle and Senski basically agree with this account, but add that when Senski inquired as to whether the matter could be resolved through payment of the obligation, Smith replied that Lavelle would not be permitted to work until the board met.

Additional testimony attributes identical statements to Serota directly. Thus, after meeting with Smith, Senski reported what had transpired to his superior, Robert Bowling, the Employer's operations manager. Bowling testified that he then called Serota, who confirmed that the Union objected to Lavelle's employment even if he paid the dues arrearage, and that he could not work until reinstated by the ''board.''[17]

Management deferred to the Respondent, with Senski informing Lavelle that nothing could be done and that he could not work, whereupon Lavelle, who was not feeling too well, left the facility.

The uncorroborated testimony of Serota is rejected in favor of the pattern of conduct attributed to him by Shop Steward Smith, an agent of the Respondent, and Senski and Bowling, both of whom were disinterested, lacking in apparent reason to implicate the Union in misconduct. Accordingly, based on the credited testimony of Smith, Senski, and Bowling, it is concluded that the Respondent violated Section 8(b)(1)(A) and (2) of the Act by requesting Lavelle's termination, without providing both accurate advice as to his monetary obligation and an opportunity to comply.

[17] Serota had no specific recollection of any conversation with Bowling, but does recall that someone from the Company sought confirmation that Lavelle had been ''expelled.'' He denied stating that even if the dues were paid, Lavelle couldn't be reinstated. Serota suggests that references by both Senski and Bowling to the fact that Lavelle could not work until the examining board approved his reinstatement was inconsistent with union practices. His testimony in this respect was not entirely consistent. Thus, he initially related that once the monetary obligation is paid, ''The examining board is a technicality . . . . [i]ts mechanical . . . you have to go in front of the examining board to . . . re-enter the union.'' Later, he suggested that reinstatement was not automatic but that the examining board would ''have to decide whether to take someone back or not'' subject to approval by the executive board. Finally, he testified, in response to a set of prejudicially leading questions that ''on many occasions, employees, who paid off arrearages, were permitted to work before reinstated by the examining board.'' He did not testify that this was always the case.

CONCLUSIONS OF LAW

1. Ransome Lift is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(b)(1)(A) and (2) of the Act by, on January 16, 1990, causing the termination of John Lavelle, without first providing adequate advice as to his obligations and an opportunity to comply.

4. The above unfair labor practice has an affect on commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, it shall be recommended that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent Union violated Section 8(b)(1)(A) and (2) of the Act by causing Ransome Lift to terminate John Lavelle, it shall be recommended that the Respondent Union be ordered to make John Lavelle whole for any loss of wages and benefits he may have suffered as a result of the Respondent's action, from January 16, 1990, to the date of his reemployment, less any net interim earnings. Backpay due shall be computed on a quarterly basis as prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), plus interest as authorized in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

[Recommended Order omitted from publication.]